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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,419	09/16/2003	Abraham Jacob Sacks	030801	2708

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George S. Levy
3980 Del Mar Meadows
San Diego, CA 92130-2258

EXAMINER

HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/663,419

Applicant(s)

SACKS ET AL.

Examiner

Yvonne M. Horton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,7,12 and 13 stand rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,540,023 to JAENSON. JAENSON discloses the use of a welded wire lathe (39) including a plurality of spaced-apart, approximately parallel transverse strands (48) substantially located in a first plane; a plurality of spaced apart, approximately parallel primary longitudinal strands (50,56) also substantially located in said first plane, intersecting and in contact with said transverse strands (48), a plurality of secondary longitudinal strands (60,62) also substantially placed in said first plane and closely spaced and approximately parallel with, some of said primary longitudinal strands (50,56), thus forming pairs of longitudinal strands (60,62), column 7, lines 27-28, said pairs (60,62) defining a plurality of longitudinal slots (the space between the pairs (60,62)) located at predetermined spaced intervals extending across said lathing material, said plurality of transverse (48) and longitudinal strands (50,56) welded together at their points of intersections (column 6, lines 42 and 46-47), and forming a plurality of rectangular meshes approximately located in said first plane; and a plurality of spacing furls (52) formed by bending said transverse strands into indentations perpendicular to, and on one side of, said first plane, at predetermined space intervals extending across said lathing material, and located along said transverse strands (48), said spacing furls situated between

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said longitudinal strands (50), tip of said indentations defining a second plane away from said first plane. Regarding claim 7, the longitudinal strands (50,56) and (60,62) have a shaped cross-section profile. In reference to claim 12, the transverse strands (48) are in the vertical direction and the secondary (60,62) and primary longitudinal strands (50,56) are in the horizontal direction, column 6, lines 10 and 11. Regarding claim 13, the strands (48), (50,56) and (60,62) are galvanized steel; column 6, lines 15-17.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2-6,8-10,11 and 14 –17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,540,023 to JAENSON. JAENSON discloses the basic claimed lathing material as detailed above, except for the use of fasteners, except for explicitly disclosing that his material can be rolled, except for explicitly disclosing the cross-section of the strands, except for disclosing an angle of inclination of the sides of the spacing furr, and except for disclosing a dimension that the spacing furr extend from the first plane. In reference to claim 2, JAENSON does not detail the use of a fastener; however, the fasteners are not positively cited in the claim. Even so, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the slot formed between the pairs of longitudinal strands (60,62) of JAENSON are capable of receiving the shaft of a fastener while retaining the head of the fastener. Although fasteners are not disclosed by JAENSON, clearly

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the addition of a fastener would ensure a secure attachment of the lathing to a substructure without the worry of the lathing coming a loose from being secured only by an adhesive. Regarding claim 3, JAENSON also does not disclose that his lathing material can be rolled. He does however, disclose that his material is flexible. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the mesh-like material of JAENSON, being flexible, is capable of being rolled. Mesh screen made from galvanized steel are very well know for their ability to be rolled and unrolled. Having the ability to be wound into rolls allows the material to be compact and provides for an ease of shipping and storage. In reference to claims 4-6 and 9, JAENSON does not disclose a specific cross-sectional dimension for his strands. He does however, detail that his strands can be 16-gauge steel. It would have been obvious to one having ordinary skill in the art at the time the invention was made that the selection of the cross-section dimension of the strands would be and obvious matter of design choice suitable for the use intended. For instance, if a more rigid lathing is desired a larger sized cross-sectional dimension would be needed; whereas, if a less rigid lathing were required, a smaller cross-sectional dimension would be needed. In further regards to claims 4 and 5, JAENSON discloses a grid spacing of 2 inches, column 6, line 13. He does not; however disclose a grid spacing from 1.4-1.6 inches. Again, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select the grid spacing as an obvious matter of design choice suitable for the use intended. A grid having smaller spacing might be more rigid or firm; whereas, a

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grid having larger spacing might be a bit less rigid. In reference to claims 8 and 17, although JAENSON does not disclose the use of a flattened cross-sectional shape strand, the applicant has not shown any criticality for a shaped cross-sectional shape strand over a flattened cross-section shape strand. Hence, the selection of either would have been well within the general skill of a worker in the art. Regarding claims 10 and 11, JAENSON does not detail an angle of inclination of the sides of the spacing furr. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select an angle of inclination suitable for the use intended as an obvious matter of design choice. For instance, a larger angle of inclination allows the lathing to be positioned more evenly and securely against a supporting structure; whereas a smaller sized angle creates a sharper or less flattened area that is placed against the supporting surface. The sharper area is not as stable as the more flattened area created by the larger angle of inclination of the sides of the spacing furr. In reference to claim 14, JAENSON does not detail how far the spacing furr extends from the first plane. However, again, this is an obvious matter of design choice that would depend upon the desired strength of the lathing and how the lathing is intended to be used. Regarding claim 15, JAENSON discloses the basic claimed lathing as detailed above for claim 1, except for the use of fasteners. JAENSON does not detail the use of a fastener; however, the fasteners are not positively cited in the claim. Even so, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the slot formed between the pairs of longitudinal strands (60,62) of

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JAENSON are capable of receiving the shaft of a fastener while retaining the head of the fastener. Although fasteners are not disclosed by JAENSON, clearly the addition of a fastener would ensure a secure attachment of the lathing to a substructure without the worry of the lathing coming a loose from being secured only by an adhesive. In reference to claim 16, the longitudinal strands (50,56) and (60,62) have a shaped cross-section profile.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,540,023 to JAENSON. JAENSON inherently discloses the method Of fabricating a building wall using welded wire lathe (10) including the steps of arranging a plurality transverse strands (48); arranging a plurality of parallel primary longitudinal strands (50,56); arranging a plurality of secondary strands to form pairs (60,62) having slots therebetween; welded the longitudinal (50,56) and (60,62) strands to the transverse strands (48), column 6, lines 42 and 46-47 to form a mesh; and forming a plurality of spacing furr (52) by bending the transverse strands (48). JAENSON discloses the basic claimed method except for the use of fasteners. JAENSON does not detail the use of a fastener; however, the fasteners are not positively cited in the claim. Even so, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the slot formed between the pairs of longitudinal strands (60,62) of JAENSON are capable of receiving the shaft of a fastener while retaining the head of the fastener. Although fasteners are not disclosed by JAENSON, clearly the addition of a fastener would ensure a secure attachment of the lathing to a substructure without the worry of the lathing coming a loose from being secured

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only by an adhesive. Further, JAENSON also does not disclose that his lathing material can be rolled. He does however, disclose that his material is flexible. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the mesh-like material of JAENSON, being flexible, is capable of being rolled. Mesh screen made from galvanized steel are very well know for their ability to be rolled and unrolled. Having the ability to be wound into rolls allows the material to be compact and provides for an ease of shipping and storage.

Response to Arguments

Applicant's arguments filed 10/25/04 have been fully considered but they are not persuasive.

Regarding the applicant's argument that pair of horizontal strands (60,62), as indicated by the examiner, do not meet the claim requirements because they are only fond at the top of the lathing and "not at spaced intervals", the claim does not require the secondary longitudinal strands to be positioned at spaced intervals. The claim merely require that the secondary strands be placed in "substantially" the first plane, closely spaced and in parallel with the primary strands such that the strands form a slot. It is the "slot" that is located at predetermined spaced intervals across the lath.

In reference to the applicant's argument that the secondary strands of JAENSON not being in "substantially the same plane as the transverse strands, clearly, the strands of the applicant's invention are similarly placed to those strands of JAENSON. The strands (12) are disposed under the strands (11) of

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the applicant's invention. Similarly, the strands (60,62) are disposed under the strands (48) of JAENSON. Thus, the strands of JAENSON are "substantially" in the same plane and are similarly structured as applicant's strands. With the first plane being the plane in which the first and secondary strands intersect, the strands of JAENSON clearly satisfy this definition.

Regarding the applicant's argument that the lath of JAENSON cannot be rolled, although JAENSON is silent in this regard, clearly, the lath of JAENSON is flexible, column 5, lines 39-40, surely, the lath is capable of being rolled.

In reference to the applicant's argument that the device of JAENSON cannot be rolled due to the strands being disposed in two different planes, whether the strands are in the same or different planes, it remains that the flexibility of the material will still allow for the lath to be rolled if needed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

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the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703) 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-8306. Information on the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YMH

1/24/05



Carl D. Friedman
Supervisory Patent Examiner
Group 3600